

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN, GREEN BAY DIVISION

3
4 Banta Corporation,

5 Plaintiff,

6 v.

7 Honeywell International, Inc.

8 Defendant.
9

No. 05-C-989

ANSWER

10
11 Defendant, Honeywell International, Inc., for its answer to the complaint filed by
12 Banta Corporation, states as follows:

13 1. Denies knowledge or information sufficient to form a belief as to the truth
14 or falsity of the allegations in paragraph 1.

15 2. Admits the allegations in paragraph 2, except states that the allegation in
16 the last sentence of paragraph 2 is a legal conclusion to which no response is required.

17 3. Affirmatively states that plaintiff defines the term "Team SRX" in
18 paragraph 3 in two inconsistent ways: both as a "project" and as a "consortium of companies
19 and organizations," rendering the use of the term "Team SRX" in paragraph 3 and in all
20 subsequent paragraphs of the complaint ambiguous. Honeywell denies knowledge or
21 information sufficient to form a belief as to the truth or falsity of the allegations in
22 paragraph 3.

23 4. Denies knowledge or information sufficient to form a belief as to the truth
24 or falsity of the allegations in paragraph 4.

25 5. Denies the allegations of paragraph 5.
26

1 6. Denies knowledge or information sufficient to form a belief as to the truth
2 or falsity of the allegations in paragraph 6.

3 7. Denies knowledge or information sufficient to form a belief as to the truth
4 or falsity of the allegations in paragraph 7.

5 8. Denies knowledge or information sufficient to form a belief as to the truth
6 or falsity of the allegations in paragraph 8.

7 9. Denies knowledge or information sufficient to form a belief as to the truth
8 or falsity of the allegations in paragraph 9.

9 10. Denies knowledge or information sufficient to form a belief as to the truth
10 or falsity of the allegations in paragraph 10.

11 11. Denies knowledge or information sufficient to form a belief as to the truth
12 or falsity of the allegations in paragraph 11.

13 12. Denies knowledge or information sufficient to form a belief as to the truth
14 or falsity of the allegations in paragraph 12.

15 13. Denies knowledge or information sufficient to form a belief as to the truth
16 or falsity of the allegations in paragraph 13.

17 14. Denies knowledge or information sufficient to form a belief as to the truth
18 or falsity of the allegations in paragraph 14.

19 15. Admits that at times relevant to this action, DiLorenzo was an employee of
20 Jabil Circuit, Inc. and denies knowledge or information sufficient to form a belief as to
21 the truth or falsity of the remaining allegations of paragraph 15.

22 16. Denies the allegations of paragraph 16.

23 17. Denies that Honeywell held out DiLorenzo as its employee or agent, admits
24 that DiLorenzo was provided office space at Honeywell's facilities in Florida, that
25 DiLorenzo from time to time used an email address with the suffix,
26 "honeywellteamsrx.com," and sent emails from that address to employees of Banta and

1 Honeywell, that Banta employees and DiLorenzo attended several meetings at
2 Honeywell's Clearwater, Florida facility, and denies knowledge or information sufficient
3 to form a belief as to the truth or falsity of the remaining allegations of paragraph 17.

4 18. Answering paragraph 18, denies knowledge or information sufficient to
5 form a belief as to the truth or falsity of the allegation regarding DiLorenzo's instructions
6 to Banta and denies the remaining allegations of paragraph 18.

7 19. Denies knowledge or information sufficient to form a belief as to the truth
8 or falsity of the allegations in paragraph 19.

9 20. Denies knowledge or information sufficient to form a belief as to the truth
10 or falsity of the allegations in paragraph 20.

11 21. Denies knowledge or information sufficient to form a belief as to the truth
12 or falsity of the allegations in paragraph 21.

13 22. Admits that Honeywell has not paid any invoices issued by Banta and
14 affirmatively states that Banta is not owed any money by Honeywell with respect to these
15 invoices or otherwise, denies that any Honeywell employee or authorized agent made any
16 such "promises," and denies knowledge or information sufficient to form a belief as to
17 the truth or falsity of the remaining allegations of paragraph 22.

18 23. Denies the allegations in paragraph 23.

19 24. Admits that on November 4, 2004, there was a meeting in Honeywell's
20 Clearwater, Florida offices that was attended by Philipose, DiLorenzo, Savino, Margolis
21 and Hibner and denies any remaining allegations of paragraph 24.

22 25. Denies knowledge or information sufficient to form a belief as to the truth
23 or falsity of the allegations of paragraph 25.

24 26. Denies knowledge or information sufficient to form a belief as to the truth
25 or falsity of the allegations of paragraph 26.

26

1 27. Admits that Banta was informed that Honeywell would not pay the invoice
2 presented by Banta at the November 4, 2004 meeting, admits there was discussion about
3 the possibility of Banta issuing an invoice for \$250,000, and denies the remaining
4 allegations of paragraph 27.

5 28. Admits that Banta did not send Honeywell an invoice for \$250,000, admits
6 that Banta has demanded payment of approximately \$1.4 million and denies knowledge
7 or information sufficient to form a belief as to the truth or falsity of the remaining
8 allegations of paragraph 28.

9 29. Denies knowledge or information sufficient to form a belief as to the truth
10 or falsity of the allegations of paragraph 29.

11 First Claim for Relief

12 Breach of Contract

13 30. Defendant restates its responses to Paragraphs 1-29 as though fully set forth
14 herein.

15 31. Denies the allegations of Paragraph 31.

16 32. Denies the allegations of Paragraph 32.

17 33. Denies the allegations of Paragraph 33.

18 Second Claim for Relief

19 Misrepresentation¹

20 34. Defendant restates its responses to Paragraphs 1-33 as though fully set forth
21 herein.

22 35. Denies the allegations of paragraph 35.

23 36. Denies the allegations of paragraph 36.

24 37. Denies the allegations of paragraph 37.

25 ¹ Honeywell files this answer to Banta's Second Claim alleging Misrepresentation in the
26 alternative should Honeywell's Motion to Dismiss the claim pursuant to FRCP 9(b) not be granted.

1 38. Denies the allegations of paragraph 38.

2 39. Denies the allegations of paragraph 39.

3 40. Denies the allegations of Paragraph 40.

4 Third Claim for Relief

5 Unjust Enrichment

6 41. Defendant restates its responses to paragraphs 1-40 as though fully set forth
7 herein.

8 42. Denies the allegations of paragraph 42.

9 43. Denies the allegations of paragraph 43.

10 44. Denies the allegations of paragraph 44.

11 45. Denies each and every allegation in the Complaint, whether express or
12 implied, that is not specifically admitted herein.

13
14 As and for its affirmative defenses, and without conceding that they carry any
15 procedural or evidentiary burdens, defendant alleges:

16 First Affirmative Defense

17 46. Plaintiff's Complaint, and each and every count alleged therein, fails to
18 state a claim against Honeywell upon which relief can be granted.

19 Second Affirmative Defense

20 47. Plaintiff's claims are barred, in whole or in part, because the alleged
21 contract is too vague and ill-defined to be specifically enforced.

22 Third Affirmative Defense

23 48. Plaintiff's claims are barred, in whole or in part, because no Honeywell
24 employee or agent was authorized to enter into the alleged contract with Banta.

25 Fourth Affirmative Defense

1 49. Plaintiff's claims are barred, in whole or in part, because Honeywell did not
2 hold out any employee or other person as having the requisite authority to enter into the
3 alleged contract with Banta.

4 Fifth Affirmative Defense

5 50. Plaintiff's claims are barred, in whole or in part, because of Banta's
6 knowledge of facts that rendered its alleged reliance on the alleged authority of certain
7 persons to bind Honeywell to the alleged contract unreasonable.

8 Sixth Affirmative Defense

9 51. Plaintiff's claims are barred, in whole or in part, because of Honeywell's
10 lack of knowledge of all material facts at the time of the November 4, 2004 meeting and
11 at all other times material to this action.

12 Seventh Affirmative Defense

13 52. Plaintiff's claims are barred, in whole or in part, because of the applicable
14 statute of frauds.

15 Eighth Affirmative Defense

16 53. Plaintiff's claims are barred, in whole or in part, because of its failure to
17 mitigate damages.

18 Ninth Affirmative Defense

19 54. Plaintiff's claims are barred, in whole or in part, because of its failure to
20 avoid avoidable consequences.

21 Tenth Affirmative Defense

22 55. Plaintiff's claims are barred, in whole or in part, because the non-
23 occurrence of certain conditions precedent of any obligation of Honeywell under the
24 alleged contract.

25 Eleventh Affirmative Defense

1 56. Plaintiff's claims are barred, in whole or in part, because the alleged
2 contract was fraudulently procured.

3 Twelfth Affirmative Defense

4 57. Plaintiff's claims are barred, in whole or in part, because of mutual mistake.

5 Thirteenth Affirmative Defense

6 58. Plaintiff's claims are barred, in whole or in part, because Banta assumed the
7 risk that the Department of Defense would not approve the proposed project.

8 Fourteenth Affirmative Defense

9 59. Plaintiff's claims are barred, in whole or in part, because of frustration of
10 purpose.

11 Fifteenth Affirmative Defense

12 60. Plaintiff's claims are barred, in whole or in part, because of Plaintiff's
13 failure to plead fraud with particularity.

14 Sixteenth Affirmative Defense

15 61. Plaintiff's claims are barred, in whole or in part, because the alleged
16 misrepresentations were not made by a Honeywell employee.

17 Seventeenth Affirmative Defense

18 62. Plaintiff's claims are barred, in whole or in part, because Banta was aware
19 of facts that rendered its alleged reliance on the alleged representations unreasonable.

20 Eighteenth Affirmative Defense

21 63. Plaintiff's claims are barred, in whole or in part, because Honeywell was
22 misled as to material facts of the time of the alleged representations.

23 Nineteenth Affirmative Defense

24 64. Plaintiff's claims are barred, in whole or in part, because of laches.

25 Twentieth Affirmative Defense

26 65. Plaintiff's claims are barred, in whole or in part, because of unclean hands.

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A. That this Court enter judgment in favor of Honeywell and against Plaintiffs on the Complaint; and that the Complaint be dismissed with prejudice; and that Plaintiffs take nothing by their Complaint;

B. That Honeywell be awarded its costs of suit in this action; and

C. That the Court grant such other and further relief as it may deem just or proper.

Joseph E. Mais
PERKINS COIE BROWN & BAIN P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, Arizona 85001-0400

LIEBMANN, CONWAY, OLEJNICZAK
& JERRY, S.C.

231 South Adams Street
P. O. Box 23200
Green Bay, Wisconsin 54305-3200
Attorneys for Defendant

152167